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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,610	05/01/2007	Ivo Westhovens	UDL-137	1585
36822 7590 02/15/2012 GORDON & JACOBSON, P.C. 60 LONG RIDGE ROAD SUITE 407 STAMFORD, CT 06902				
EXAMINER DESAL KAUSHIKKUMAR A				
ART UNIT 3788		PAPER NUMBER		
MAIL DATE 02/15/2012		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/599,610

**Applicant(s)**

WESTHOVENS ET AL.

**Examiner**

KAUSHIKKUMAR DESAI

**Art Unit**

3788

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 December 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 5) ☒ Claim(s) 1-6,8-32 and 34-38 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 1-6,8-32 and 34-38 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-CB00)  
Paper No(s) Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s) Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

### **DETAILED ACTION**

1. Applicant response has been received and its contents have been carefully considered.

Claims 37-38 are new.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

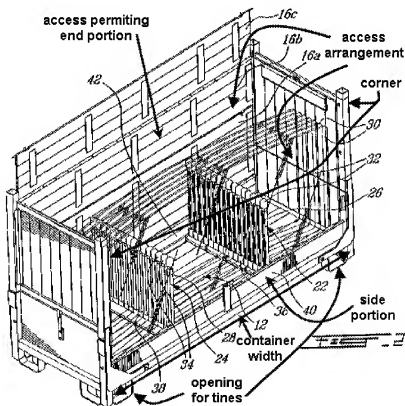
#### ***Claim Rejections - 35 USC § 103***

2. Claims 1-6, 8-14, 17, 20, 24, 28-32, 35, 37 and 38 are rejected under 35 U.S.C. 103[a] as being unpatentable over US 2003/0164318 to Lacasse et al. in view of US 6691885 to Brown.

1, 12 and 35: Lacasse discloses a container [figs 1-3] for transportation and storage of items comprising an enclosure [see annotated fig 2 below] having an access arrangement providing access by means of an uppermost portion [open top, see annotated fig 2 below] and an access permitting end portions [fig 2] bounded by a corner [top] of the container; as functionally claimed a securing arrangement comprising an upright restraints [22/24] are configured to be advanced [fig 2] and retracted [fig 3] across the width of the container for supporting long, irregularly shaped bulk products in an upright orientation [e.g. fig 2]. Lacasse further comprises movable side panels [16 and 14] proximate access permitting end portions. It has been held that when element is functionally claimed, e.g., configured to, is considered a functional language and is treated as intended use or result to be achieved and only requires the ability to so perform. It does not constitute a limitation in any patentable sense. MPEP 2111.04 (A).

Lacasse discloses the claimed invention as discussed above with the exception of the following claimed limitation that is taught by Brown.

Brown teaches movable side panel [door, 90, fig 2] being pivotable about a pivot mounting [fig 12] spaced apart from the corner [top] of the container to render open a said access [fig 2] permitting end portion [fig 3] of the container at said corner. Brown suggests retention and transportation of bulk products in the stackable container with easy access from top and side [figs1-3, column 1:11-17]. It would have been obvious to one of ordinary skill in the art to provide Lacasse container with the pivotable side panels as taught by Brown, so as to provide an alternative closing means as commonly known within the art.



2: Lacasse/Brown discloses that the container is of frame construction [fig 1].

3: Lacasse/Brown discloses that the container has one or more openable ends [figs 2, 3].

4: Lacasse/Brown discloses that the container has a closed end panel [fig 1].

5: Lacasse/Brown discloses that the container has an openable top [fig 2].

6: Lacasse/Brown discloses that the side panel [14 and 16] proximate the access permitting end of the container is movable to open the end side portion of the container [fig 2].

8. Lacasse/Brown discloses that the side panels [14, 16] on opposed sides of the container [fig 1] are pivotable about respective pivot mountings spaced apart from respective corners [fig 12] movable to open respective end side portions of the container.

9: Lacasse/Brown discloses that the movable side panels [14, 16] on opposed sides of the container are positioned proximate opposed ends of the container [fig 1].

10: Lacasse/Brown discloses that the frame openings on the lower portion of the container for receiving tines of a lifting apparatus [see annotated fig 2 above].

11: Lacasse teaches formations on its upper and lower portions (see fig 5) for stacking purposes.

13, 14: The claim does not invoke the provisions of 35 USC 112, 6<sup>th</sup> paragraph. Lacasse discloses support means 36/38.

17, 20, and 24: Lacasse discloses contact members 32/34, which are re-orientatable with respect to the container [Figs. 2 & 3].

28: Lacasse discloses securing element 36/38 arranged to lie in engagement with the underside of the items [fig 2].

29-32: Lacasse discloses glass sheets 30. Provision of a second container would entail a mere duplication of parts and would have been obvious to one of ordinary skill in the art in order to provide more items with the ability to ship to different locations. It has been held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced. *In re Harza*, 274 F.2d 669, 124 USPQ 378 [CCPA 1960].

37. Lacasse/Brown discloses that the claimed invention except that the pivot mounting allows the side panel to pivot about a vertical pivot axis. It would have been obvious to one having ordinary skill in the art at the time of the invention to provide Brown's door instead of horizontal axis, since it has been held that rearranging parts of an invention where each element performs the same function with no unexpected results involves only routine skill in the art and is considered an obvious extension of prior art teachings. *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950). MPEP 2144.04 VI-C. Furthermore, providing the door pivoted about vertical pivot axis would work equally well to allow access to the compartment.

Furthermore, door pivoted about vertical pivot axis, as claimed or as disclosed in the prior art respectively would work equally well to provide access to the compartment.

38. The claim limitations are the combination of claims 1 and 37; therefore, the rejection of claim has been discussed above.

3. Claims 25-27 and 34 are rejected under 35 U.S.C. 103[a] as being unpatentable over Lacasse/Brown as applied to claim 1 above, and further in view of US 3,963,122 to Pater et al..

Lacasse/Brown as applied to claim 1 above discloses the claimed invention with the exception of the slide elements.

Pater teaches the provision of slide elements 50 on opposite sides of an upright restraint near the end portions of the container [fig 1] and having friction reducing surfaces 62 for engagement with the sides on a retained article to prevent longitudinal motion during transit [e.g. Col. 5:5-9], and for said purpose, it would have been obvious to one of ordinary skill in the art to provide the assembly of Lacasse/Brown with slide elements as taught by Pater.

4. Claims 15-19, 21, 28-30 and 32 are rejected under 35 U.S.C. 103[a] as being unpatentable over Lacasse/Brown as applied to claim 1 above, in view of US 4,278,171 to Millhoan.

15, 16: Lacasse/Brown discloses the claimed invention as discussed above with the exception of the following claimed limitation that is taught by Millhoan.

Millhoan teaches lock arrangement 50/52 [fig 2] for locking the upright restraint at a selected position across the width of the container. It would have been obvious to one of ordinary skill in the art to provide Lacasse container with lock arrangement as taught by Millhoan to keep the upright restraint at a selected position across the width of the container secured to the frame.

17-19, 21: Millhoan discloses contact members 53/55 with adjustment arrangement 50/52. It is noted that Millhoan appears to present a typographical error in describing the cushions as items 52 and 54 [Col. 3:52-54], since items 52 and 54 are previously defined as a bolt and pin. The cushions are presumed to be items 53 and 55 as depicted in Figure 4.

28: Millhoan discloses securing element 34 arranged to lie in engagement with the underside of the items [fig 2].

29, 30, and 32: Millhoan discloses glass sheets 20. Provision of a second container would entail a mere duplication of parts and would have been obvious to one of ordinary skill in the art in order to provide more items with the ability to ship to different locations. It has been held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced. *In re Harza*, 274 F.2d 669, 124 USPQ 378 [CCPA 1960].

5. Claims 22 and 23 are rejected under 35 U.S.C. 103[a] as being unpatentable over Lacasse/Brown/Millhoan as applied to claim 17 above, and further in view of Kitagawa et al [US 5,145,073].

Lacasse/Brown/Millhoan as applied to claim 17 above, discloses the claimed invention with the exception of the contact member on the container. However, Kitagawa teaches the provision of a contacting cushion 60 on the container to prevent the retained sheets from contacting the frame of the container, and for said purpose, it



would have been obvious to one of ordinary skill in the art to provide the container of Lacasse/Brown/Millhoan with contacting members as taught by Kitagawa.

### ***Response to Arguments***

6. Applicant's arguments with respect to claims 1-6, 8-32 and 34-36 have been fully considered. However, Applicant's arguments are not persuasive for the following reason: In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., upright restraint **moved** across the width of the container) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Contrary to Applicant contention, Lacasse discloses "access permitting end portion" [see annotated fig 2 above]. In response to applicant's argument that "In order to achieve this, an access permitting end portion would also need to be incorporated into Lacasse as well as the side panels of Brown. This would require more than trivial inventive skill". It is noted that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test of obviousness is what the combined teachings of the references would have suggested to those of ordinary skill in the art and it would have been an obvious modification for one of ordinary skill in the art, without undue experimentation yielding

only predictable results. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). However the arguments still deemed to be relevant have been addressed in the body of the rejections, at the appropriate locations.

### ***Conclusion***

**7. Examiner's note:** Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well.

It is respectfully requested from the Applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art and/or prior art(s) listed by the Examiner in PTO-892.

**8.** Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAUSHIKKUMAR DESAI whose telephone number is (571)270-7290. The examiner can normally be reached on Monday- Friday 7:00 AM - 4:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Pickett can be reached on 571-272-4560. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. D./  
Examiner, Art Unit 3788  
Thursday, February 02, 2012.

/J. Gregory Pickett/  
Supervisory Patent Examiner, Art Unit 3788